GAHC030006982026

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./98/2026

Sh. J. Laltholeha and 2 Ors
S/o J. Hranglawma, R/o V Section, Tlangsam, Champhai, Mizoram

2: Sh. Lalchuangkima

3: Smt. Lalduhzual

VERSUS

Union of India
Aizawl

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

Advocate for the Respondent : Special PP

BEFORE

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI
ORDER

15.10.2026

Heard Mr. Lalpianfela Chawngthu, learned counsel for the applicants. Also heard Mr. Raymond Lalbiakzama, learned Special PP for Union of India (Directorate of Revenue Intelligence).

2. This is an application under Section 483 of BNSS read with Section 37 of ND&PS in connection with Seizure Case No. 02/CL/IMP/NDPS-METH/DRI-AZL/2026-27 dated 06.08.2026 under Section 22(c)(25)(29) ND&PS Act, 1985.

3. The applicants herein were travelling in an Ambulance bearing registration No. MZ-04A-8673 which was proceeding from Champhai to Aizawl and intercepted by the personnel of the respondents on 06.08.2026 at 3:30 pm at Sakei Bangla, Seling and from the stated vehicle a recovery of 15 brick-sized packets containing suspected Methamphetamine tablets were recovered and the occupants of the Ambulance, who are the applicants were arrested and detained in custody.

4. I have heard the learned counsels for both the parties.

5. Mr. Lalpianfela Chawngthu, learned counsel for the applicants submitted that the main grounds for seeking bail of the instant applicants are the violation of Section 47 & 48 of BNSS.

6. On a pointed query from this Court as to whether the applicants have approached the Special Court, ND&PS Act, the learned counsel for the applicants has submitted that they have not approached the said Court.

7. Ms. Vanneihsiami, learned Addl. PP has submitted that inspite of the fact that in terms of section 438 BNSS, the Sessions Court/Special Court and the

High Court has the power to deal with bail application but such practice is not encouraged and the proper procedure would be to first approach the competent Trial Court.

8. The applicants have approached this Court directly without exhausting the remedy before the learned Special Judge, ND&PS Act at Aizawl. Admittedly, the aforesaid Court was never approached earlier by the applicants for grant of bail. As per the examination of the learned counsel for the applicant, they have come to the High Court directly as the Fundamental Right involving the liberty of the applicants is being violated.

9. This Court in the case *of* ***Kwmta Gwra Brahma Vs. State of Assam*** reported in ***2015 (2) GLT 665*** it has been held as follows :-

> *17. It is therefore necessary that normally a person/accused should file an anticipatory bail application u/s 438 of the Cr.PC or a bail application u/s 439 of the Cr.PC before the Sessions Court and thereafter he can approach the High Court. However, this is not an inviolable rule. In exceptional circumstances a person/accused can directly approach the High Court. The following are the circumstances under which a person/accused can directly approach the High Court.*
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> *(i) When a person/accused from other State has to move an application for grant of anticipatory bail u/s 438 of the Cr.PC, if it is convenient for him to move such application before the High Court directly, which is nearer from the point of distance, in such a case the application filed before the High Court need not be rejected on the ground that he can approach the Sessions Court unless the Sessions Court is also located in the same place*
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> *(ii) Whenever in a Session jurisdiction a particular incident or crime has attracted a lot of public and media attention with an adverse public opinion having been built up against the person/accused, in such cases the 438 Cr.PC applications and 439 Cr.PC applications can be filed directly before the High*

Court

(iii) When the Sessions Court has already rejected an application for grant of bail u/s 438/439 of the Cr.PC where one of the persons accused is similarly placed it is not necessary that the similarly placed person/accused should approach the Sessions Court for grant of bail, he can file an application before the High Court u/s 438/439 of the Cr.PC.

18. The above circumstances are illustrative and not exhaustive. There could be other exceptional circumstances which would always depend upon the facts and circumstances of each case.

19. In view of the reasons and discussions made above it is held that normally a person/accused should exhaust his remedy u/s 438 or 439 of the Cr.PC before the Sessions Judge before making an application before the High Court as 68 or 439 of the Cr.PC. However in exceptional illustrated circumstances a person/accused can approach the High Court without exhausting his remedy before the Sessions Judge.

10. The High Court of Jammu & Kashmir and Ladakh in ***Khursheed Ahmad Kann Vs. UT of J&K 2021:JKLHC-SGR:647*** have dismissed the bail application which was filed directly to the High court on the ground that no exceptional circumstance was made out to approach the High Court directly without first actually exhausting the remedy before the learned Trial Court. Similar decisions are to be found in the Order passed by the High Court of Karnataka in the case of ***Smt. Savitri Samson Vs. State of Karnataka*** reported in ***2001 CriLJ 3164,*** the High Court of Madhya Pradesh in the case of ***Smt. Manisha Neema Vs. State of Madhya Pradesh,*** reported in ***2003(2) MPLJ 587*** and Delhi High Court in ***Gopal Goyal Vs. State of NCT of Delhi (Bail Appln. No. 1565/2012 decided on 19.11.2012)***

11. From the analysis of the case laws on the subject, it is clear that even though the provision of section 439 Cr.PC confers concurrent jurisdiction on the High Court and the Sessions Court, an application should ordinarily be filed before the Sessions Court/Special Court at the first instance and not directly to the High Court and in order to file the application directly to the High court, it is necessary to demonstrate and exceptional, rare and unusual reasons.

12. Upon examining the instant case on the backdrop of the decisions referred above, it is noticed that no exceptional circumstances have been made out by the applicant to approach the High Court directly without first exhausting the alternative remedy in the Court of first instance i.e., the Special Court, ND&PS Act.

13. In view thereof and without discussing on the merit of the application, the instant application is dismissed.

14. The applicants, if they so desires, may approach the Court of the learned Special Judge, ND&PS Act for bail.

15. Return the Case Diary.

16. The application stands disposed of.

JUDGE

Comparing Assistant